

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL BAIL APPLICATION NO. 1976 OF 2018

Aniket Alias Arunkumar Avdhesh Soni	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Manoj R. Gowd, for the Applicant.
Mr. S.S. Hulke, A.P.P for the Respondent - State.
API- V.L. Kadam, Kalwa Police Station, Thane.

***CORAM : REVATI MOHITE DERE, J.
DATE : 21st August, 2019***

P.C. :

1. Heard learned counsel for the parties.
2. By this application, the Applicant seeks his enlargement on bail in connection with C.R.No. I-409 of 2017 registered with the Kalwa Police Station, Thane, for the alleged offences punishable under Sections 377 of the Indian Penal Code and under Sections 3(d), 4 of Protection of Children from Sexual Offences Act.
3. Learned Counsel for the applicant submits that the allegations as against the applicant, aged 19 years, are false and baseless.

He submits that there is a dispute between two groups/families, as a result which, the applicant is falsely implicated. Learned Counsel for the applicant submits, that similar allegations of Section 377 of IPC were made by the victim-boy and his mother as against two persons in the said locality. He submits, that the medical certificate does not support the allegation of Section 377 of IPC. Learned counsel for the applicant has tendered an affidavit-cum-undertaking of the applicant that in the event, he is enlarged on bail, he will not enter the area where the complainant and the victim-boy is residing. Learned Counsel for the applicant submits that, the applicant's mother is suffering from HIV and as such, the applicant is required to take his mother to Sion Hospital. Learned APP has tendered the medical case papers of the victim-boy, which show that when the victim-boy was examined, there was no sign of any forcible intercourse nor any injuries were present on the anal region at penis and scrotum. The said medical case papers are not part of the charge-sheet. Learned APP was directed to produce the medical case papers of the victim boy, pursuant to which learned APP has produced the said medical certificate. The said medical certificate is taken on record.

4. Perused the papers. According to the victim-boy, aged 6 years, the applicant had committed an offence under Section 377 of IPC on him. The incident is alleged to have taken place on 17/11/2017. The FIR was lodged on 26/11/2017 and on the very day, the victim-boy was examined. The medical examination of the victim-boy shows that no injuries were noticed as stated aforesaid. Learned APP also does not dispute the fact that the medical papers do not support the allegations of the victim-boy. Whether or not, the applicant has been falsely implicated because of the dispute between two families/groups, is a matter which will be decided by the Trial Court. The applicant is in custody since 2017. Investigation is complete and charge-sheet is filed.

5. Considering the aforesaid and affidavit-cum-undertaking given by the applicant, the application is allowed on the following terms and conditions:-

ORDER

i) The applicant be released on cash bail in the sum of Rs.15,000/-, for a period of six weeks;

- ii) The applicant shall within the said period of six weeks, furnish P.R. Bond in the sum of Rs.15,000/- with one or more local sureties in the like amount;
- iii) The applicant shall attend the concerned Police Station, on the first Saturday of every month, between 10:00 a.m. to 11:00 a.m., till the conclusion of the trial;
- iv) The applicant shall not enter the jurisdiction of Kalwa Police Station except for the purpose of attending the police station and taking his mother to the Hospital;
- v) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, victim-boy, witnesses or any person concerned with the case;
- vi) The applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of

the matter and to the Investigating Officer of the concerned Police Station;

vii) An undertaking to the aforesaid clauses (iii) to (vi), shall be filed by the Applicant, in the Registry of the trial Court, within two weeks of his release;

viii) If there are two consecutive defaults either in attending the Police Station or in appearing before the trial Court or breach of any of the conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

6. The Application is allowed and disposed of in above terms.

7. It is made clear, that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

8. All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)